

STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

_____))
IN THE MATTER OF:))
))
Local Government Center, Inc. et al) Case No.: C-2011000036
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RESPONDENTS))
_____))

**ORDER DENYING MOTIONS FOR
SUMMARY JUDGMENT**

BACKGROUND

The Bureau of Securities Regulation (hereinafter “BSR”) and HealthTrust, Inc. (hereinafter “HT”) have each moved for summary judgment, arguing that there are no genuine issues of material fact in the present matter, and that judgments should be rendered in their respective favor. Property-Liability Trust (hereinafter “PLT”) has joined HT’s motion seeking summary judgment. The BSR has objected to HT’s motion for summary judgment. HT, joined by PLT, have objected to the BSR’s motion for summary judgment.

The hearing was conducted on June 9, 2014 in Concord, New Hampshire with all parties of record represented by legal counsel. Each had the opportunity to address the issues presented by their filings through exhibits and to present oral argument and legal support for their respective positions, to challenge opposing factual assertions, and to undertake rebuttal. Following oral arguments the hearing was adjourned and the record was closed.

A motion was filed on June 6, 2014 by a collection of several political subdivisions seeking to intervene in these proceedings to which all parties of record at this time indicated that they did not intend to respond to the intervenors’ motion. The intervenors were not represented by counsel to address the motion at this time and no further action was taken regarding intervention.

STANDARD OF REVIEW

A moving party is entitled to summary judgment if the pleadings, discovery, and affidavits, viewed in the light most favorable to the non-moving party, demonstrate that there are no genuine issues as to any material fact. *Pelky v. Dan's City Used Cars, Inc.*, 163 N.H. 483, 486 (2012). A fact is “material... if it affects the outcome of the litigation under the applicable substantive law.” *Palmer v. Nan King Rest.*, 147 N.H. 681, 683 (2002). If “review of the evidence discloses no genuine issue of material fact and if the moving party is entitled

to judgment as a matter of law,” then summary judgment is appropriate. *Deyeso v. Vacadi*, 165 N.H. 76, 79 (2013).

The issues presented in both the BSR’s and HT’s motions for summary judgment involve the repayment of \$17.1 million dollars by PLT to HT and whether PLT retained its independent, separate board of directors once the October Agreement became effective on January 10, 2014. The Final Order directed, among other things, the Local Government Center to “organize its two pooled management programs into a form that provided each program with an independent board and its own set of written bylaws.” The Final Order also directed, among other things, the “[PLT]...to repay the \$17.1 million subsidy to the [HT]...no later than December 1, 2013.”

In its motion for summary judgment, the BSR argues that that October Agreement effectively expanded the scope of HT’s governance and effectively eliminated PLT’s board of directors. HT disagrees with this assertion, arguing that PLT continued to have its own separate board of directors that monitored HT’s compliance with the October Agreement and to oversee the runoff of its assets. The BSR also says that the PLT has not properly paid the \$17.1 million subsidy to the HT.

Conversely, in its motion for summary judgment, HT argues that PLT’s board of directors continues to exist to monitor HT’s compliance with the October Agreement. The Bureau counters that the October Agreement effectively expanded the scope of HT’s governance and effectively eliminated PLT’s board of directors, allowing HT to operate the property-liability and workers compensation lines of coverage. The respondents further assert that the \$17.1 million subsidy has been properly paid.

The issue of HT and PLT’s governance is material, as it goes to whether or not the October Agreement violated the Final Order’s provision to organize as independent and separate entities. The parties are not in agreement regarding the separate independence in the governance of these boards of directors. The issue of whether or not HT has properly been repaid the \$17.1 million by PLT is material, as it goes to whether or not the Final Order’s provision regarding that repayment was violated. Thus, because there are disputed issues of material fact as to the actions of the respondent’s since the final order, and its substantial affirmance by the Supreme Court, related to governance of the entities and repayment of the \$17.1 million subsidy, summary judgment is improper at this time.

CONCLUSION

For the reasons stated above the law does not allow granting either the Bureau of Securities Regulation’s or the HealthTrust/Property-Liability Trust’s motions for summary judgment, and each is denied.

So Ordered, this 16th day of June, 2014.

A handwritten signature in black ink that reads "Donald E. Mitchell". The signature is written in a cursive style with a large, prominent initial "D".

Donald E. Mitchell, Esq., NH Bar#1773
Presiding Officer

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